

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 19, 2007

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 19, 2007, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Darrell Downing, Chair; Don Anderson, Vice-Chair; John W. McKay, Jr.; David Dennis; Bill Johnson; Elizabeth Bishop (In @ 1:32 p.m.); M.S. Mitchell; Don Sherman (In @ 1:35 p.m.); Bud Hentzen; Ronald Marnell (In @ 1:32 p.m.); Hoyt Hillman; G. Nelson Van Fleet; and Michael Gisick. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Scott Knebel, Principal Planner and Lisa Estrada, Recording Secretary.

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1. Approval of the June 7, June 21 and July 5, 2007 MAPC minutes.

Approval of the June 7, 2007 MAPC minutes.

DOWNING referred to the motion on page 49 and commented that he believed that an abstention by a City appointee was the same as a "yes" vote.

JOE LANG clarified that an abstention was considered a "yes" vote, unless the Chair recognized the abstention.

DOWNING requested that the vote be changed to reflect 10-0.

MOTION: Approval of the June 7, 2007 MAPC minutes.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (8-2). **MITCHELL** and **MCKAY** abstained. **BISHOP, MARNELL, SHERMAN** absent.

Approval of the June 21, 2007 MAPC minutes.

MOTION: Approval of the June 21, 2007 MAPC minutes.

HILLMAN moved, **MCKAY** seconded the motion, and it carried (10-0).

BISHOP in @ 1:32 p.m.

MARNELL in @ 1:32 p.m.

Approval of the July 5, 2007 MAPC minutes.

MITCHELL referred to page 6, the first sentence and commented that who "he" was, was not clear.

DOWNING requested that staff research that issue and correct the minutes accordingly. ("He" referred to **NEIL STRAHL**, the Planner presenting the report.)

MOTION: Approval of the July 5, 2007 MAPC minutes.

BISHOP moved, **HILLMAN** seconded the motion, and it carried (11-0). **GISICK** abstained.

SHERMAN in @ 1:34 p.m.

❖ **Items # 2-1 through 2-3 may be taken in one motion unless there are questions or comments.**

Consideration of Subdivision Committee recommendations from the meeting of July 12, 2007.

2-1. SUB 2006-109: One-Step Final Plat -- LIVING WORD OUTREACH ADDITION, located west of Hydraulic and north of MacArthur Road.

NOTE: This is a replat of a portion of the Rainbow 2nd Addition. The plat includes the vacation of three streets.

STAFF COMMENTS:

- A. The applicant shall provide in lieu of assessments for the sewer main since this site was never assessed for sewer main or lateral. The site was also not assessed for water and though it is available on Galena, fees in lieu of assessment are applicable for connection.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has requested an updated drainage plan. As drainage will be directed onto I-135, a letter shall be provided from KDOT indicating their agreement to accept such drainage.
- D. The applicant shall contact the adjoining landowners regarding a vacation case for Pattie. In the alternative, a guarantee is needed for the paving of Pattie.
- E. The year "2007" needs to replace "2006" within the signature blocks.
- F. The remaining portion of Victoria Street adjoining to the east is unimproved and should be vacated. The Applicant shall contact the property owners to the east to attempt to have this half-street right-of-way vacated.
- G. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.

- N. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **DENNIS** seconded the motion, and it carried (13-0).

- 2-2. **SUB 2007-48: Final Plat -- CRYSTAL GARDENS ADDITION**, located on the north side of 13th Street North and east of 135th Street West.

NOTE: This is a replat of a portion of the West Meadows Addition and a portion of the Blattner Addition. This plat consists of Parcels 2 and 3 of the Lewis Development Community Unit Plan Amendment #1 (CUP2006-49, DP-264).

STAFF COMMENTS:

- A. As requested by City Water Utilities Department, the applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted and include sewer main in lieu of assessment fees with sewer petition.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan. An off-site drainage agreement is needed. It should be specified that minimum pads are NGVD29.
- D. The plat proposes one street opening along 13th St. Access controls have been approved by Traffic Engineering.
- E. The Applicant shall guarantee the paving of the proposed streets.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- G. Since Reserve A includes a swimming pool, a site plan has been submitted with the final plat, for review and approval by the Planning Director. The design for the pool must be submitted to Environmental Services for review prior to issuing a building permit for the pool.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved

Community Unit Plan and its special conditions for development on this property.

- K. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. The Subdivision Committee has required a turnaround at the intersection of Turkey Creek and Nantucket. The plat should also conform with the Wichita Fire Department single street entrance access standards.

The turnaround has been platted as requested.
- M. GIS has requested that “ W Hunters View St” needs to be labeled adjacent to Lots 1-9, Block A.
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- O. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant’s engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary’s signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant’s responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Sedgwick County Rural Electric Cooperative and Westar Energy have requested additional easements.
- W. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **DENNIS** seconded the motion, and it carried (13-0).

2-3. SUB 2007-58: Final Plat -- KING’S COURT ADDITION, located west of Hoover and south of Maple.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of City water to serve the lots being platted. The property was not included in the sewer benefit district so the applicant will need to extend sewer or pay in lieu of lateral assessment to connect for all four lots.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the drainage plan. A drainage guarantee is needed.
- D. A covenant shall be submitted regarding the private drive (Reserve A), which sets forth ownership and maintenance responsibilities and limits the private drive to servicing Lots 3 and 4.
- E. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- F. City Fire Department has requested an all-weather surface for the private drive.
- G. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should note that any construction that results in earthwork activities that will

disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, DENNIS seconded the motion, and it carried (13-0).

MITCHELL said MAPD staff advised him today that the drainage plans have been approved for all three of the above plats.

❖ **PUBLIC HEARINGS – VACATION ITEMS**

- 3-1. **VAC 2007-21: Request to vacate a platted setback**, generally located east of Woodlawn Boulevard, north of 13th Street North, and southwest of Stratford and Armour Lanes.

| | |
|-----------------------------------|---|
| <u>OWNER/APPLICANT:</u> | Brandon Walsh |
| <u>LEGAL DESCRIPTION:</u> | Generally described as the platted 30-foot front yard building setback, located on Lot 2, Block 7, McEwen 6 th Addition, Wichita, Sedgwick County, Kansas. |
| <u>LOCATION:</u> | Generally located east of Woodlawn Boulevard, north of 13th Street North southwest of Stratford and Armour Lanes (WCC #II) |
| <u>REASON FOR REQUEST:</u> | Additional room for a garage |
| <u>CURRENT ZONING:</u> | The site and all abutting and adjacent properties are zoned “SF-5” Single-family Residential. |

The applicant proposes to vacate the platted 30-foot front yard setback. The Unified Zoning Code’s (UZC’s) minimum front yard setback for the “SF-5” Single-family Residential zoning district is 25-feet. If the setback were the minimum 25-foot setback per the UZC, an Administrative Adjustment could be applied to reduce the 25-foot setback by 20%; a 20-foot setback. There is a 5-foot half of a 10-foot platted side yard setback on the property’s west side that will not be affected by the vacation request. There are no platted utility easements within the platted setback. There are no manholes, sewer or water lines in the platted setback. Sewer is located along the lot’s south property line and water is located in the Stratford Lane right-of-way (ROW). Comments from the franchised utilities and Storm Water have not been received and are needed to determine if they have utilities located within the easement. The McEwen 6th Addition was recorded with the Register of Deeds October 11, 1958.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of the platted setback with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle and the Derby Reporter of notice of this vacation proceeding one time June 28, 2007 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described platted setback and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the platted setback, described in the petition should be approved with conditions:

- (1) The new setback will be per the UZC's minimum 25-foot front yard setback for the "SF-5 zoning district or/and if necessary a 20-foot front yard setback, as permitted by the 20% reduction standards of an Administrative Adjustment.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. If needed provide easements for utilities. Retain the existing platted easement that intersects the platted setback.
- (3) All improvements shall be according to City standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) The new setback will be per the UZC's minimum 25-foot front yard setback for the "SF-5 zoning district or/and if necessary a 20-foot front yard setback, as permitted by the 20% reduction standards of an Administrative Adjustment.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. If needed provide easements for utilities. Retain the existing platted easement that intersects the platted setback.
- (3) All improvements shall be according to City standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **DENNIS** seconded the motion, and it carried (13-0).

- 3-2. **VAC 2007-22: Request to vacate portions of platted complete access control**, generally located on the west side of Ridge Road, south of K-96 and on the south side of Village Circle.

OWNER/APPLICANTS:

COF, LLC, c/o Jac Jensik Wichita Northwest Medical Properties, LLC,
37th & Ridge Development Company, LLC, c/o Mike Boyd

AGENT: Baughman Company, PA

LEGAL DESCRIPTION: Reduce, by 30-feet, the platted 60-foot access easement centered on the lot line common to Lots 3 & 4 & remove the platted 60-foot access easement centered on the common lot line of Lots 1 & 2, all in Block 1, all in North Ridge Village Addition, Wichita, Sedgwick County Kansas; apply complete access control to those above described access easements. Vacate 30-feet of platted complete access control along the common lot line of Lots 3 (10-feet) and 2 (20-feet), all in Block 1, all in North Ridge Village Addition, Wichita, Sedgwick County Kansas.

LOCATION: Generally located west of Ridge Road, south of K-96 and on the south side of Village Circle (District #V)

REASON FOR REQUEST: Improve access and internal circulation on property and to satisfy the title company's requirements

CURRENT ZONING: The site and all abutting and adjacent northern and southern properties are zoned "LC" Limited Commercial. The site and the adjacent northern properties are part of CUP DP-280. The abutting western property is zoned "SF-5" Single-family Residential and is part of CUP DP-280. Adjacent eastern properties, across Ridge Road, are zoned "SF-20" Single-family Residential

The applicants are requesting the described vacation of the platted complete access control, in order to relocate access the described lots. The vacation request is associated with an adjustment to CUP DP 250 & 280: CUP 2007-036. There is a sewer line located in the 30-feet (of the 60-foot total) of access easement located on Lot 1. There is a sewer line located in the remaining 30-feet (of the 60-foot total) of access easement located on the common lot lines of Lot 3 & 4. Water is located in the street right-of-way (ROW). Comments from franchised utilities have determined that they have no utilities in the access easements. The North Ridge Village Addition was recorded with the Register of Deeds April 13, 2005.

Note: At the time the North Village Addition was recorded a dedication by separate instrument for the referenced access easements was recorded. The dedication was a private contractual agreement, which the City was not a party to. Neither the plat nor the plat's text references the dedication by separate instrument and its language indicating the access easements are a private contract. Although the City has no jurisdiction over private agreements (this access easement), the lack of reference on the plat and in the plat's text to the private agreement has created an issue with the title company in reference to the subject property, thus the vacation request and subsequent Vacation Order as the document that will satisfy the title company's requirements for clear title.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from Public Works, Storm Water, the Traffic Engineer, franchised utility representatives and other interested parties, Planning Staff recommends approval of the requested vacation of the described portions of complete access control, with the following findings:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication, as required by law, by publication in the Wichita Eagle & the Derby Reporter of notice of this vacation proceeding one time June 28, 2007 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted complete access control and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted complete access control described in the petition should be approved with conditions:

1. Allow as approved by the Traffic Engineer.
2. CUP2007-36 will reflect the approved vacation request VAC2007-22.
3. Any relocation or reconstruction of utilities made necessary by the vacation shall be the responsibility and at the expense of the applicant, including dedication of utility easements to cover the relocated utilities. If utilities, specifically the sewer lines, are to remain in their current locations, along the common lot lines of Lots 3 & 4 and on the western portion of Lot 1, all in Block 1, all in North Ridge Village Addition, retain 30-feet of the access easements as a sewer/utility easement, as directed by Public Works/Water & Sewer/Storm Water/franchised utilities.
4. All improvements shall be to the City's standards and at the owner's expense
5. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

- (1) Allow as approved by the Traffic Engineer.
- (2) CUP2007-36 will reflect the approved vacation request VAC2007-22.
- (3) Any relocation or reconstruction of utilities made necessary by the vacation shall be the responsibility and at the expense of the applicant, including dedication of utility easements to cover the relocated utilities. Any dedication of public utility easements must be approved by Public Works and will be forwarded to Planning to go with the Vacation Order to the Wichita City Council. If utilities, specifically the sewer lines, are to remain in their current locations, along the common lot lines of Lots 3 & 4 and on the western portion of Lot 1, all in Block 1, all in North Ridge Village Addition, retain 30-feet of the access easements as a sewer/utility easement, as directed by Public Works/Water & Sewer/Storm Water/franchised utilities.
- (4) All improvements shall be to the City's standards and at the owner's expense
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **DENNIS** seconded the motion, and it carried (13-0).

❖ **PUBLIC HEARINGS**

ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 P.M.

4. **Case No.: ZON2007-13** – BATC LLC c/o Bob Armstrong (owner), Ruggles & Bohm PA c/o Chris Bohm (agent) Request Zone change from "SF-5" Single-family Residential to "TF-3" Two-family Residential on property described as;

The North half of the East half of Lot 5, Block 18 of Parkwilde Addition, Sedgwick County, Kansas.
Generally located West of Florence and south of 2nd Street North (223 N. Florence).

BACKGROUND: The application area is a vacant, platted lot located on the west side of N Florence and south of 2nd Street N. The .21-acre site is zoned “SF-5”, the applicant requests “TF-3” zoning to develop a duplex.

All property immediately surrounding the site is zoned SF-5 and developed with single-family residences. Southeast of the site is an SF-5 zoned church, TF-3 and MF-18, Multi-family residential zoning exist within the same block as the application area. One duplex exists within this same block, and several additional duplexes exist within a one block radius.

CASE HISTORY: The site was subdivided as the North ½ and East ½ of Lot 5, Block 18 of the Parkwilde Addition in 1987.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|--------|-----------------------------------|
| NORTH: | “SF-5” | Single-family residential |
| SOUTH: | “SF-5” | Single-family residential |
| EAST: | “SF-5” | Single-family residential |
| WEST: | “SF-5” | Single-family residential, church |

PUBLIC SERVICES: N Florence is a paved 2-lane arterial with a 60-foot right-of-way at this location. All normal utilities are available at the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential.” The Urban Residential category includes all densities of residential development found within the urban municipality. The Unified Zoning Code (UZC) requires a minimum lot area of 3,000 square feet per residential unit in “TF-3” zoning. The application area is .21 acres or 9,000 square feet, exceeding the UZC size requirement for a duplex.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The immediate surrounding properties are zoned “SF-5” and developed with single-family residences. However, the surrounding neighborhood is a mix of residential zoning districts, and a mix of single and two-family residential development.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed with a single-family residential use under the current zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double the density at which the site could be developed. The affect on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences. The minimum standards of the UZC should mitigate any other potential negative affects on the surrounding residential neighbors.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential”. The Urban Residential category includes all densities of residential development found within the urban municipality.
5. Impact of the proposed development on community facilities: Traffic on the existing residential street could increase as a result of the proposed development. This site has access to 2nd Street and nearby access to West Street, a classified arterial.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **SHERMAN** seconded the motion, and it carried (13-0).

5. **Case No.: ZON2007-18** – Mathew Murray (owner, co-applicant) / Doug Maryott (contract purchaser, co-applicant, agent) Request City zone change from “SF-5” Single-family Residential to “LC” Limited Commercial for a narrow strip of property on property described as;

West 90 feet of Lot 1, Block 7, Bonnie Brae Addition, Wichita, Sedgwick County, Kansas. Generally located Two Hundred and fifty feet north of Kellogg Drive on the east side of Heather Street (8201 Peach Tree).

BACKGROUND: The applicant owns a 90-foot wide by 140-foot deep platted lot (west 90 feet of Lot 1, Block 7, Bonnie Brae Addition) that contains 12,600 square feet, is zoned SF-5 Single-family Residential, and is developed with a single-family residence. Staff is advised the residence is a rental. The lot is located at 8201 East Peachtree, which is the southeast corner of Peachtree Lane and south Heather Road, and adjoins land to the south and east (Lot 6, Ruth Addition and Lot 4, Higgins-Andeel 2nd Addition) that have frontage on East Kellogg’s north frontage road. These two lots (Lot 6 and Lot 4) are zoned LC Limited Commercial, and developed with the Wichita Inn East and parking that supports the inn. The applicant proposes to sell the southern 29 feet, 2,610 square feet, of the subject lot to the adjoining property owner to the south, CAP Partnership, which operates the Wichita Inn East.

Lot 6, Ruth Addition, the western end of the Wichita Inn’s site, is located immediately south of the subject property, and is partially developed with parking that supports the motel. Lot 6 was originally much deeper, but with improvements to East Kellogg the lot is now approximately 118 feet deep. Adding 29 feet from Lot 1 to the Inn’s land area would provide an approximately 147-foot deep lot that would more useable. One of the Inn’s partners has indicated the area could be used for additional landscaping and a swimming pool. The Inn’s property is zoned LC and the request for the subject property is also LC so other uses are possible. Parking is probably the limiting factor for potential uses. Vacation of Heather could potentially add LC zoned land to the area.

The sale of a portion of a residential lot developed with a single-family home is somewhat unusual, however, the configuration of the applicant’s lot and lots adjacent to the subject site have contributed to this unusual situation. The applicant’s lot was originally part of an “Oklahoma” shaped lot with a “panhandle” that extended east from the applicant’s current rectangle shaped lot. As mentioned above, the applicant’s lot is currently 140 feet deep, north to south. The “panhandle” portion of the original lot was only 67 feet deep (north to south) by 99 feet wide (east to west). At some point, Lot 1 was split to create the two portions of Lot 1 that we have today. Because of this somewhat unusual lot configuration, the land to the south (Lots 2 and 3 of the Higgen-Andeel 2nd Addition) extends further north than the lots located east and west of these two lots, creating an irregular boundary where LC zoning projects further north on these two lots than on the lots located to the east and west.

If the request is approved, the home site would still retain 9,990 square feet of lot area, which is well within the minimum lot area requirement for this zoning district, and there would be approximately 26 feet from the house to the new lot line. There is an eight-foot platted utility easement located along the existing south property line that has a sewer line located within the easement. If a building is placed on the site, the utility easement will have to be addressed to ensure that lot containing the home still has legal access to utilities. It will also be necessary to ensure that the residential lot abuts a utility easement. A boundary shift will need to be obtained. In addition to the utility easement, construction on the site will trigger applicable code required setbacks, landscaping, screening and height considerations.

The land north, east and west of the site are part of the Bonnie Brae neighborhood, zoned SF-5, Single Family Residential and are developed with single-family homes. The lot to the east of the application area is only 67 feet deep so the applicant’s lot already has LC zoning along its eastern boundary for a distance of 72 feet. Heather Road separates the applicant’s property from the property located to the west. Currently both the applicant’s lot and the neighboring lot to the west (across Heather) rear property lines terminate at the same depth from Peach Tree Lane, where Heather is fenced and closed to through traffic. Approval would introduce 29 feet of LC zoning further north than the rear of the property owner’s lot to the west of the subject site.

CASE HISTORY: The Bonnie Brae Addition was recorded in 1953.

ADJACENT ZONING AND LAND USE:

NORTH: SF-5, Single-family Residential; single-family residential
SOUTH: LC, Limited Commercial; motel parking, motel
EAST: LC, Limited Commercial; motel
WEST: SF-5, Single-family Residential; single-family residential

PUBLIC SERVICES: Public services are available but may have to be modified to ensure that the lot abuts all required utility easements. There is a platted eight-foot utility easement located along the north side of the south property line. Heather Road has been closed mid-block to prevent traffic from the Kellogg corridor traveling through the Bonnie Brae neighborhood. Peach Tree Lane is a local residential street.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* map depicts the site as the dividing line between “urban residential” and “regional commercial.”

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property to the east and south is zoned LC and developed with a motel. Property to the north and west is zoned SF-5 and developed with a residence. The subject site is located in a transition zone between single-family residential and retail and service commercial uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site could continue to be used as the back yard of the single-family residence used as rental property. If the request is approved, the site will still have significant footage (over 9,000 square feet) over code required minimum lot standards (5,000 square feet), and will be larger than the lots immediately to the east.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval would project LC zoning further north by 29 feet when compared to the property to the west, but will not exceed the existing depth of LC zoning on the east. The property owner is the applicant, and apparently is a willing seller and does not see this proposal as a threat to his investment. Code required setbacks, landscaping and screening requirements would minimize detrimental affects.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval will add to the square footage of LC zoned property fronting East Kellogg and may assist with keeping an existing hotel competitive. Denial would presumably be an economic loss to the lot owner due to the potential loss of the transaction.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* map depicts the site as being the dividing line between “urban residential” and “regional commercial” uses. Movement of the line 29 feet further north will not be inconsistent with plan recommendations.
6. Impact of the proposed development on community facilities: Additional easements may be required to ensure that the lot continues to abut utility easements. Otherwise, little, if any, impact on community facilities is foreseen.

DALE MILLER Planning staff presented the staff report. He stated that DAB II had recommended denial of the request. He also mentioned that copies of protest petitions had been distributed to each member prior to the meeting. He added that he had attended a neighborhood association meeting where the neighborhood was not supportive of the request.

MCKAY asked about the location of the fence and the parking lot.

MILLER explained the location of the fence.

BISHOP said the staff report makes it look like the entire lot is included. She clarified that it was the southern twenty-nine feet of the lot.

MILLER said yes, that was correct.

DOUG MARYOTT, 3741 N. ROCK ROAD, APPLICANT, said he was the managing partner of the Wichita Inn East.

DOWNING asked if the applicant was in agreement with staff comments?

MARYOTT responded yes.

MARTY WEEKS, 8108 MOCKINGBIRD, said she has lived in the Bonnie Brae subdivision for 46 years. She said the area has grown and developed, and Bonnie Brae has grown and developed with it. She said over the years there have been several steps taken by the residents to keep the area a good place to live, and it still is a wonderful residential area that they would like to keep that way. She mentioned the recent request for rezoning of eight feet that was denied by DAB II and the City Council. She requested that the MAPC make a recommendation to deny this rezoning request because they feel the encroachment of Limited Commercial is detrimental to the neighborhood.

MARY JANE SHERER, 8327 WILLOWBROOK said she was present to protest any rezoning in her neighborhood. She said the residents have a reputation of being very protective of Bonnie Brae. She mentioned street closings to cut down on traffic from Kellogg. She said she has lived in Bonnie Brae for 35 years, and was very pleased with the neighborhood. She requested that the MAPC not change the zoning of the neighborhood.

MAXINE MALE, 221 BONNIE BRAE, said she was present as a representative of the Bonnie Brae Neighborhood board, and her many neighbors and friends on Peachtree. She said there is a fence so traffic can't go through the neighborhood, but it is also true that there are sidewalks on each side of the fence. She said they don't want outsiders walking into their residential area or Limited Commercial encroachment because it would devalue their property. She said she wanted to protest on behalf of the Bonnie Brae neighborhood.

HILLMAN asked if there were sidewalks there now?

MALE indicated where the fence and sidewalk were located.

HILLMAN asked if she had visited with the neighbor to the west concerning reconnecting any fencing, since the hotel will be completing the fencing if the application is approved. He said that would eliminate the problem.

HENTZEN asked where the sidewalk would lead? To the hotel or motel?

MALE said the sidewalk would lead to whoever owns the property next to the hotel. She said she thought it was a Mr. Andale.

MCKAY commented that the sidewalk was in public right of way

BISHOP asked if Heather Street has been vacated south of that area.

MILLER responded no.

JOAN MURRAY, 8215 WILLOWBROOK, said she had received a letter about this meeting; that she has lived in the area for 30 years; and that she didn't like to see any encroachment into the neighborhood. Responding to a question from **HENTZEN**, she said they do not want Heather Street open; however, it was nice to have access out of the neighborhood on foot.

MARYOTT said three or four years ago they approached the owner of the house (he indicated on the map) and asked if they could buy 10 or 20 feet in the back for landscaping and maybe an indoor pool. He said they lost interest in that idea; however, he said recently the owner of the house approached them and asked them if they would buy the back 29 feet. He said they don't have immediate plans; that they can't build on that 29 feet because 20 feet of that is utility easement. He said if the application is approved, they are going to build a new fence on the

north side and that they would be happy to block off the sidewalk if the neighborhood wants them to. He said they assumed they couldn't block the sidewalk because it was a public sidewalk.

MCKAY asked if a fence could be built across the sidewalk?

MILLER said they would have to obtain a "minor street permit" from the Public Works Department.

MCKAY asked about vacating the street from Peachtree south to the fenced area or property line?

MILLER said a vacation would be possible if the property owners on both sides agreed and signed off on it.

MOTION: To approve subject to staff comments.

JOHNSON moved, **ANDERSON** seconded the motion.

SUBSTITUTE MOTION: To deny based on neighborhood opposition and a lack of demonstrated need for the change.

BISHOP moved but the motion died due to lack of a second.

MCKAY said he would like to request that **JOHNSON** add that the applicant apply for a "minor street permit" and put a fence all of the way across blocking the sidewalk as part of the approval conditions to his motion.

JOHNSON said he would add that to the motion.

BISHOP commented that she regretted that the Commission did not have a memo from DAB II giving them additional information. She said this was another example of a proposal that seems like it makes sense on the surface, but ends up damaging neighborhoods. She said she felt Bonnie Brae needed to be protected from the encroachment along Kellogg.

HILLMAN said he believed the current motion and amendment meets the needs of the neighborhood and solves the problem for all parties.

BISHOP said she tended not to approve processes that block off pedestrian access and that the motion does not solve the problem as far as she was concerned.

MOTION: To approve subject to staff comments, and that the applicant apply for a minor street, and put a fence all the way across blocking the sidewalk.

JOHNSON moved, **ANDERSON** seconded the motion, and it carried (11-2) **BISHOP** and **GISICK** - No.

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6. **Case No.: ZON2007-28** – Harley J. Voth (owner) Request City zone change from "LC" Limited Commercial to "GC" General Commercial on property described as;

BEGINNING 20 FEET SOUTH AND 450 FEET EAST OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE EAST 109.9 FEET; THENCE SOUTH 132 FEET; THENCE WEST 109.9 FEET; THENCE NORTH 132 FEET TO BEGINNING. S24-T27S-R1W. Generally located Southwest of the intersection of West Douglas Avenue and North McComas Avenue (3825 W. Douglas Ave.)

BACKGROUND: The applicant owns an unplatted lot (0.33 acre in size) located 500 feet east of the intersection of West Street and Douglas Avenue, along the south side of Douglas. This lot is currently zoned "LC" Limited Commercial and appears to be developed with a warehouse / storage type use. The applicant is seeking "GC" General Commercial zoning in order to conduct "vehicle repair, general" (auto body and paint shop) work at this location. The existing building on site would be utilized as the new auto body shop. The shop would have garage

door openings on the north side, facing Douglas Ave. The primary entrance and reception area would also be located on the north side of the building.

Surrounding uses include developed LC property (Lots 1, 2 and 3, Black and Towns Addition) located immediately north of the application area. North of the LC lot, are lots zoned "B" Multi-Family Residential and LC with multi-family development that faces McComas Ave. There are other single-family homes along McComas Ave. on "SF-5" Single-Family Residential zoned lots south of the subject site. There are also single-family and multi-family residences located along Illinois Ave. Illinois Ave. is the first street west of the application area. There is residentially developed zoned land located immediately south of the application area (Lots 1 and 2 of the Charles Jackson Addition). The closest residential lot with a residential structure is directly adjacent to the applicant's proposed building from the south. The "LC," Limited Commercial land to the east is developed with a bar / nightclub. The "LC," Limited Commercial land located west is developed with a retail strip store.

Parking requirements for "vehicle repair, general" are 1 space per 500 square feet of building plus 3 spaces. The applicant would need approximately 14 spaces to meet code. "Vehicle Repair, General" is defined by the UZC as an establishment that is primarily engaged in painting of or body work to motor vehicles or heavy equipment, and is first permitted in the "GC," General Commercial district. If the site is redeveloped as proposed, landscape street yard, parking lot screening and buffer plantings will be required.

CASE HISTORY: This property has been zoned LC since the adoption of the Unified Zoning Code ("UZC") in 1996 and is currently unplatted.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|---|----------------------------------|
| NORTH: | "LC" Limited Commercial | Retail Strip Store |
| EAST: | "LC" Limited Commercial | Bar / Nightclub |
| SOUTH: | "MF-29" Multi Family / "SF-5" Single-Family | Multi & Single Family Residences |
| WEST: | "LC", Limited Commercial | Retail Strip Store |

PUBLIC SERVICES: Public sanitary sewer service is available to this location. A sewer line runs along the south property line. Public water is available. On-site septic would not be allowed if sewer service is available. Douglas Avenue, at this location, is a four-lane arterial carrying approximately 6,500 average daily trips in 2006.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" map depicts this site as appropriate for "local commercial" uses. The "Comprehensive Plan" commercial locational guidelines state that commercial uses not located in planned centers should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development. The "Wichita Residential Area Enhancement Strategy Map" depicts this site a "revitalization" area. Revitalization areas are neighborhoods experiencing structural and market decline, but market and development opportunities still exist.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However if the Planning Commission feels the request is appropriate, the application should be subject to the following Protective Overlay conditions:

- A. Permitted uses are restricted to those uses permitted by right in the "LC" Limited Commercial district plus "vehicle repair, general".
- B. All parking, storage and display areas shall be paved with concrete, asphalt or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries, except where fences are erected, to ensure that parked vehicles do not encroach onto public right-of ways or adjacent properties.
- C. No off-site or portable signs are permitted.
- D. Exterior audio systems shall be prohibited.
- E. All vehicles that are not complete and visually intact or are stored more than 72 hours are to be screened from ground view from abutting / adjoining properties and from abutting streets. Screening shall be of a material approved by the Unified Zoning Code.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. All nearby properties are zoned “LC” Limited Commercial, “SF-5” Single-family Residential and “MF-29” Multi-family Residential. No “GC” zoning and no uses permitted by “GC” are in the vicinity.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned “LC” and developed with what appears to be a warehouse / storage structure. The lot fronts Douglas, which is a significant east-west arterial. With the Douglas Avenue frontage, and the “LC” zoning which allows a wide range of uses, it seems that the site could be developed as zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce additional open storage and a more intense use(s) than is currently permitted on nearby lots. Auto body shops tend to generate more noise and odors than less intense auto repair uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The “Wichita Land Use Guide” map depicts this site as appropriate for commercial uses. The “Comprehensive Plan” commercial locational guidelines state that commercial uses not located in planned centers should be guided to other appropriate areas such as the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development. This site does not comply with these locational guidelines.
5. Impact of the proposed development on community facilities: The proposed body shop would not generate any more traffic than uses permitted under the current zoning

DERRICK SLOCUM Planning staff reported that the applicant has asked for more time. He requested that the item be deferred until the August 2, 2007 MAPC meeting.

MOTION: To request deferral until August 2, 2007

DOWNING moved, **SHERMAN** seconded the motion, and it carried (13-0).

7. **Case No.: CON2007-22** – Scott Hoskinson (owner/applicant), Baughman Company, PA c/o Russ Ewy (agent) Request County Conditional Use to expand a sand and gravel extraction operation (CON2000-12) on property zoned “RR” Rural Residential on property described as;

That part of the Southwest Quarter of Section 15, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: The South 735 feet of the West Half of said Southwest Quarter, EXCEPT the East 110 feet thereof and EXCEPT that part taken for road. Generally located on the northeast corner of 53rd Street North and Ridge Road.

BACKGROUND: The applicant is requesting a Conditional Use to allow an 18-acre expansion of an existing unplatted 58.3-acre sand and gravel extraction operation; CON2000-12. The proposed expansion would extend the existing operation south, down to 53rd Street North and east to Ridge Road. The proposed expansion would not increase the size of the 40-acre sandpit lake of CON2000-12, but instead reconfigure it and extend it 8-acres to the south. The applicant is asking for a 6-year extension of the current CON200-12 site to allow operations on the proposed expansion to begin and finish. The subject property and the existing sand pit are zoned “RR” Rural Residential.

CON2007-22’s site plan shows CON2000-12’s existing operational area which includes a shed, an office, scale, plant, existing fencing, a gate on the northwest corner, 150, 200 and 100-foot setbacks, the limits of its 40-acre lake and its drive/circulation. The CON2007-22 site plan also shows the proposed 18-acre expansion area, which including the expansion of CON2000-12’s 40-acre sandpit lake, a second plant site, proposed fencing, 300-foot maximum and 150-foot minimum setbacks along 53rd, what appears to be a 70-foot setback along its east side, an undetermined setback along its west side and a sign of undetermined size and type. CON2007-22’s plant is located behind the 150-foot setback. The sit plan also shows the relocated security gate across the site’s drive, just before it intersects 53rd. A farmhouse and its out buildings, owned by the applicant, are also shown on the site plan, with the farmhouse area fenced off from the existing and expanded operational area. The redevelopment plan shows the site

as one commercial tract. Commercial uses on the site would require a zone change. The redevelopment plan also includes CON2000-12's redevelopment plan, which shows 5-7 large single-family sites on its west side and one large single-family site on its east side.

From 1975 to the present, sand and gravel extraction operations have created 9 active or spent sandpit lakes (including the applicant's current active site) in this area located along the north and south sides of 53rd, east from the Arkansas River and west to Tyler Road. Properties abutting and adjacent to the east side of the site are zoned "RR" and "SF-20" Single-family Residential and are developed as working sand and gravel extraction sites (CU-328 and CU 346). There are 7-8 single-family residences or farmsteads located in front of these sandpits, along the north side of 53rd, from Ridge to the Arkansas. There are another 10-11 single-family residences and farmsteads on "SF-20" zoned properties, located south/southeast of the site, across 53rd Street. There are also another 3 sand and gravel extraction sandpit lakes located in this area, south of 53rd. There is one small, undeveloped "LC" Limited Commercial zoned site located on the southeast corner of 53rd and Ridge. West of the site, across Ridge, properties are zoned mostly "RR", with an isolated "SF-20" zoned area. An "RR" zoned spent sand and gravel extraction sandpit lake is located west, across Ridge, from the site. There is a single-family residence on this sandpit lake site. West of this sandpit lake there is also a cluster of two "LI" Limited Industrial zoned properties; two "GO" General Office zoned properties and a small "LC" zoned property. Properties north of the site are zoned "RR" and are developed as large tract single-family residences, farmsteads or are agricultural fields.

The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands. Storage of equipment and material would not be permitted within 100 feet of the south property line and 50 feet of the west and east property lines.

CASE HISTORY: The site is unplatted. The site is proposed to be an expansion of CON2000-12, a Conditional Use for a sand and gravel extraction operation that was approved June 29, 2000. Additional conditions of approval include a restrictive covenant designating CON2000-12's 40-acre sandpit lake for use as temporary detention storage of drainage water. Another restrictive covenant prohibited depositing of foreign matter on CON2000-12's site and required the use of certain types of bank stabilization materials and their final surface projection for grading on the site. Dedication of additional street right-of-ways were also required. CON2000-12 is permitted to operate for 10-years.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|---------|--|
| NORTH: | "RR" | Agriculture, Single-family residential |
| SOUTH: | "SF-20" | Single-family residential, operating and used sand and gravel extraction operations/sandpits |
| EAST: | "RR" | Sand and gravel extraction operations, single-family residences |
| WEST: | "RR" | Sand and gravel extraction sandpits, single-family residences |

PUBLIC SERVICES: This site when combined with CON2000-12, has access to 53rd Street North and Ridge Road, both two-lane paved section line roads. Access to the site will be from 53rd Street North. 53rd Street North has current traffic volumes of approximately 2,500 average daily trips, and Ridge Road has current traffic volumes of approximately 3,800 average daily trips. The 2030 Transportation Plan estimates that these volumes will increase to approximately 8,500 and 6,200 average daily trips, respectively. Municipal water and sewer services are not currently available to serve this site, and the site is located outside the 30-year urban service area. Use of the site for sand and gravel extraction and, subsequently, single-family residences can be supported by on-site water and sewer service. The proposed commercial redevelopment of the site could be problematic because of the lack of municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide classifies this area as "Rural." This classification encompasses land outside the 2030 urban growth areas for Wichita and the small cities. The site, located on the north side of 53rd Street North, is just outside the 2030 urban growth area. The south side of 53rd Street, at this location is inside 2030 urban growth area. The "Rural" classification is intended to accommodate agricultural and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately large lot residential sites or subdivisions with provisions for individual, or community water and sewer services. Sand and gravel extraction operations are a common development in areas of rural Sedgwick County that are in close proximity to the Arkansas River.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with the approved site and redevelopment plans (including any modifications to limitations on the scope of excavations required by other regulating agencies), and be subject to the supplementary use regulations found in the Unified Zoning Code at Article III, Section III-D.6.gg, unless specifically modified by conditions contained in this conditional use. If limitations on the scope of excavation are required after final approval, the applicant shall provide a revised site plan depicting those restrictions. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan. The applicant shall provide a date when the 18-acre site will begin to be used as part of the sand and gravel extraction operation.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.
3. Adjacent to the south, east and west property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. A minimum 60-inch-high fence shall be constructed adjacent to the western portion of the property, where the applicant's has a farmstead and its out buildings, prior to the beginning of any extraction operation. The fence and all existing hedgerows/trees along the property's edge shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

4. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal to one vertical.
5. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
6. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel and Public Works Department, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
7. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.

10. The storage of equipment or stockpiling of sand is not permitted closer than within 50-feet of the west and east property lines and 100-feet of the south property line. Property lines are per CON2007-22's site and do not replace the "no stockpiling areas" of CON2000-12.
11. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
12. The approval of the Conditional Use is for a period not to exceed 6-years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. The approved 10-year operation period for the 18-acre site does not extend the operation period for CON2000-12. As part of the required operational plan, the applicant shall combine the site with CON2000-12's site and show the combined areas as 3 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
13. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
14. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Sedgwick County Office of Central Inspection.
15. Any water wells needed to operate the facility must comply standards as determined by the Kansas Department of Health and Environment rules and regulations.
16. The applicant shall make the site available to KDHE and the Sedgwick County Office of Central Inspection/Public Works for the installation and management of groundwater monitoring wells.
17. Any on-site storage of fuels or chemicals must be approved by the Sedgwick Fire Department.
18. A drainage plan shall be submitted to and approved by the Sedgwick County Public Works Department prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
19. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust. The south 705-feet of the existing drive onto 53rd Street North shall be maintained as it currently is, paved with asphalt millings.
20. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
21. The applicant shall dedicate by separate instrument additional street right-of-way for 53rd Street North and Ridge Road, as determined by Sedgwick County Public Works.
22. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel and Public Works, prior to the commencement of any sand and gravel extraction operation, providing an area for temporary detention storage of drainage water drainage.
23. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is zoned "RR" and "SF-20" and has nine active or spent sandpit lakes created by sand and gravel extraction operations in the vicinity. There are large tract single-family residences or farmsteads in the area and some agricultural fields. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation

District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

2. The suitability of the subject property for the uses to which it has been restricted: The site abuts an active sand and gravel extraction operation and is currently an agriculture field. This use could continue until the end of the abutting active sand and gravel extraction operation, after which it could be developed as single-family residential sites.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.
5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.

BILL LONGNECKER Planning staff presented the staff report.

MCKAY clarified that the MAPD just rezoned the northwest corner of that intersection to Limited Commercial.

LONGNECKER responded yes.

Responding to a question from **BISHOP**, **LONGNECKER** explained that the Maize Planning Commission would be hearing the case tonight at 7:30 p.m. and that they were okay with hearing the case after the MAPC made a recommendation.

BISHOP said the last time the MAPC had a sandpit application in the Maize area it turned into a very controversial item. She said at that time the MAPC discussed looking at sandpit applications in general in Sedgwick County and, specifically, looking at density requirements. She asked staff if any progress had been made on that idea.

LONGNECKER said staff had nothing to report on that issue. He also mentioned that the case she was referring to was the LaFarge sand pit, which was an unusually large sand pit consisting of 400 acres. He said this request was only going to be a 40-acre site, and was an extension of an existing sand pit. He said that in regards to the density and spacing of the sand pits, sand extraction needs to occur where sand is located. He stated that there were nine active or spent sand pit lakes located along this portion of 53rd Street between the river, east of the site, and west to Tyler Road. He observed that in his discussions with the Maize planner about the case, that she had offered no negative comments on staff findings or recommendations.

MILLER clarified that staff originally had the Maize hearing scheduled prior to the MAPC hearing, but because there was no quorum at that date, which was over the 4th of July weekend, the Maize Planning Commission decided to consider the case tonight.

RUSS EWY, BAUGHMAN COMPANY, AGENT FOR THE APPLICANT reiterated **MILLER's** explanation concerning the Maize Planning Commission, and said they have indications from the City of Maize that they have no issues with this proposal. He said they started on the site with a 40-acre lake and they are finishing with a 40-acre lake, unlike LaFarge, which was creating a new lake, this is simply a reconfiguration.

MOTION: To approve the item subject to staff comments and conditional approval by the Maize Planning Commission.

HILLMAN moved, but motion died due to lack of a second.

MCKAY stated that he didn't think the Commission could do what HILLMAN suggested in his motion and, he made the following substitute motion.

SUBSTITUTE MOTION: To approve subject to staff recommendation.

MCKAY moved, MARNELL seconded the motion, and it carried (13-0).

8. **Case No.: CON2007-26** – John R. McCollister Request County Conditional Use for outdoor recreation on property zoned "RR" Rural Residential on property described as;

A tract of land in the Northeast Quarter of Section 21, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as: Beginning 398.27 feet South and 390 feet West of the Northeast corner of the Southeast Quarter of the Northeast Quarter; thence South 300 feet; thence East 390 feet; thence South to the Northeast corner of the South 10 Acres of the Southeast Quarter of the Northeast Quarter; thence West 1315.26 feet; thence North 603.65 feet; thence E 924.8 feet to beginning except the East 50 feet for road. Generally located on the west side of Ridge Road, midway between 45th and 53rd Streets North.

BACKGROUND: The applicant is requesting a County Conditional Use for "Recreation and Entertainment, Outdoor" for a Halloween "haunted forest" on approximately 10.9-acres of his unplatted 15-acre "RR" Rural Residential zoned tract. The applicant proposes to operate the "forest" during the month of October, on Fridays and Saturdays, 5 & 6, and the 12 & 13, Thursdays, Fridays and Saturdays, 18, 19, 20 and 25, 26, and 27, and Monday, Tuesday and Halloween Wednesday, 29, 30, and 31. Operation hours are from dark until 11:00 PM weekdays and from dark till midnight on weekends. The applicant has stated that he has had the "forest" at this site for several years and has provided a 1985 lease agreement between him and the previous property owner allowing the "forest" at this site. Several neighbors have called about the case and have confirmed that the "forest" has been in operation for some time at this site, but they were not sure how long it has been in operation. The applicant was recently directed by Sedgwick County Code Enforcement to apply for a Conditional Use to attempt to bring the "forest" into compliance or to stop operating it. County Code Enforcement cannot recall complaints about the "forest." Haunted houses and outdoor Halloween mazes/woods have been considered as seasonal "Recreation and Entertainment, Indoor and Outdoor" Conditional Uses. The Unified Zoning Code (UZC) permits "Recreation and Entertainment, Outdoor" as a Conditional Use in the "RR" zoning district with the following minimum conditions:

- (1) The property shall be contiguous to an arterial or expressway.
- (2) The lighting standards of Sec.IV-B.4 shall be complied with. No string type of lighting or banners shall be permitted.
- (3) The noise standards of Sec.IV-C.6 shall be complied with.
- (4) All driveways, parking, loading, and vehicle circulation areas shall be paved with concrete or asphalt.
- (5) The Planning Commission may establish operating hours as part of the Conditional Use approval if the property is located in close proximity to residential areas.
- (6) The property shall be properly policed to insure proper maintenance and removal of trash from the premises to eliminate problems to adjacent or public property.

The applicant's site plan shows a 210-foot (x) 269-foot sand parking lot along the property's Ridge Road frontage and the entrance to the property. It also shows the a manufactured home (used by the applicant on weekends), a yard light, some fencing, portable rest rooms, a 16-foot (x) 16-foot temporary office, some existing trees along the property's south, east and west sides and the pathway through the "haunted forest." County Code Enforcement and Permits would need to permit the portable restrooms. County Code Enforcement and Permits will require a building permit and inspection for the temporary building. The County Commission would have to consider waiving the paving requirement for all driveways, parking, loading, and vehicle circulation areas (see #4 above), if the applicant requests that some other materials be used, which would have to approved by County Fire. Some dimension control has been provided on the site plan.

The area around the site, along Ridge Road, is developed as single-family residential, with houses located on tracts ranging from 1-acre in size to the applicant's (+) 15-acres and includes a suburban scale subdivision (Childs Acre Addition, recorded December 21, 1961) located approximately 380-feet southeast of the site. Altogether there are approximately 45-50 houses located within 1,000-feet of the site. The nearest residences are located approximately 30-feet south (built 1948), 135-feet north (1970) and 160-feet east (across Ridge, 1965 and 1967)) from the proposed parking of the site. The other houses located in close proximity to the site were built in 1915, 1917, 1935,

1940 and 1957. The zoning of all residential development in the area is either “RR” or “SF-20” Single-family Residential. There are primarily agricultural lands located west of the site, which are zoned “RR.”

CASE HISTORY: The property is unplatted. Staff has received two phone calls asking about the case. The callers did note that they could here noises such as chain saws, screams, and howling and noted car lights, trash and traffic generated by the site. These calls have noted that their homes were in the area before the applicant started the “haunted forest,” but also stated that the “forest” had been operating at Halloween for some time.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|---------|--------------------------|
| NORTH: | “RR” | Single-family residences |
| SOUTH: | “RR” | Single-family residences |
| EAST: | “SF-20” | Single-family residences |
| WEST: | “RR” | Agriculture |

PUBLIC SERVICES: This site is accessed via Ridge Road, a paved two-lane section line road with a 50-foot half-width right-of-way (ROW) at the site. Current standards require 60-feet of half street ROW. Ridge Road has current traffic volumes of approximately 3,800 average daily trips. The 2030 Transportation Plan estimates that the volume will increase to approximately 8,500 average daily trips. The 2030 Transportation Plan indicates that this portion of Ridge will remain a two-lane arterial. Municipal water and sewer services are not currently available to serve this site. The site is located inside the 30-year urban service area.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive Plan* identifies this area of Sedgwick County as within the Wichita 2030 Urban Growth Area. This category identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by the year 2030. This is in the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030.

The UZC provides for “Recreation and Entertainment, Outdoor” as a Conditional Use limited to tennis courts, miniature golf, and similar uses that the Planning Commission has determined will not produce undue noise or attract large numbers of spectators. The UZC goes on to apply supplementary use regulations for the “Recreation and Entertainment, Outdoor” to include lighting, noise, driveway/parking surfacing, the option to establish operating hours, maintenance requirements, and a standard stating that street access shall be contiguous to an arterial or expressway. The proposed Conditional Use appears to have operated for several years without a permit within an area of established single-family residences. This application does not meet the parking area-paving requirement, waiving this requirement it would the require governing body’s approval according to the UZC section V-D.6. The current 50-foot half-street ROW does not meet county standards of 60-feet.

RECOMMENDATION: Within 1,000-feet of the site there are 45-50 single-family residences. Within a ½-mile of the site there are at least that additional number of single-family residences. Along 53rd Street North there are 9 active or spent sand pits, with single-family residential development on the spent sandpit lakes and most probably single-family residential development going to occur around the active sandpit lakes when the extraction operations are completed on them. The area was established as single-family residential prior to the “haunted forest” moving into the area and the trend is that it will continue to develop as single-family residential. The proposed “haunted forest “ needs to be located in an area that is not an established single-family residential area with this type of density. Therefore, based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the surrounding area:** The character of the area is established single-family residential with houses located on properties ranging in size from 19,000 square-feet (Childs Acre Addition) to 1-acre and up to the applicant’s (+) 15-acre site, which is one of the larger properties in the area. The area’s zoning is either “RR” or “SF-20.”
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned “RR,” which primarily permits agriculture and large lot residential uses. The site could continue to be used as a single-family residence or agriculture without the Conditional Use.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use could generate an amount noise, traffic and trash that are not typical of the existing single-family residential area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: A key consideration for the Halloween season's "haunted forest, mazes or haunted houses" is the potential impact of the noise, traffic and trash that they generate in relation to their proximity to single-family residential development. The proposed site is within 30-feet south (built 1948), 135-feet north (1970) and 160-feet east (1965 and 1967) of single-family residences, all of them being in place prior to the "haunted forest" moving into the area as a noncompliant use. It appears that most of the 45-50 single-family residences in the area were in place prior to the "haunted forest" moving into the area. The request does not meet the driveway and parking area-paving standard of the Wichita-Sedgwick County Unified Zoning Code.
5. Impact of the proposed development on community facilities: The requested Conditional Use will generate increased traffic on this portion of Ridge for the month of October.

However, if the MAPD finds the request acceptable and recommends approval Staff proposes the following conditions:

1. The Conditional Use for Recreation and Entertainment, Outdoor shall be for a "haunted forest" only.
2. Advise the BoCC to waive the paving requirement for all driveways, parking, loading, and vehicle circulation areas, to be replaced with materials approved by County Fire/County Engineer
3. The applicants shall obtain all applicable permits and inspections including, but not limited to County building and health.
4. Dedicate 10-feet of right-of-way.
5. The entrance drive to the site shall meet County standards, as approved by County Fire and Engineering.
6. The applicant shall submit a revised site plan. Development and maintenance of the site shall be in conformance with the approved site plan.
7. No lighting of outdoor entertainment/recreation (except as noted) areas or lighting of parking lots shall be permitted. Outdoor lights shall be confined to the existing yard light, lighting confined to the inside of the temporary office building and one porch type of light attached to it and the a pair of car lights attached to a 12-volt battery as shown on the site plan.
8. No outdoor sound amplification systems shall be permitted on the site.
9. Days of operation for the "haunted forest" shall be October 5, 6, 12, 13, 18, 19, 20, 25, 26, 27, 29, 30, and 31. Hours of operation shall be from 6PM to 11PM on weekdays and from 6PM to midnight on weekends.
10. The parking area shall be located no closer than 75-feet from the abutting southern and northern properties. The temporary office shall be located no closer than 75-feet from the abutting north property. Portable restrooms shall be located no closer than 100-feet from abutting properties
11. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

BILL LONGNECKER Planning staff presented the staff report, noting that staff had presented the Planning Commission with both a denial of the request as presented and an approval with conditions. He also stated that staff had not received any protest calls on the request.

MARNELL clarified that the application was for one year only and that the applicant would have to return annually if they wanted to continue the operation.

LONGNECKER stated that staff had not put a time restraint on the conditional use permit; however, he further clarified that days of operation were Thursdays and Fridays the first two weeks of October, then Thursdays, Fridays and Saturdays for the third and fourth weeks of October, with the day before Halloween and Halloween day itself for the final week of October. There was a brief discussion concerning days of operation.

JOHN MCCOLLISTER, 5059 N. RIDGE ROAD, owner of the Haunted Forest, said because it is kind of dark in the forest, he would like some low voltage lights close to the ground so that people won't get hurt and he would also like some kind of music. He added that the Haunted Forest was a charity event has been every year it has been open with the money going to McDonald House and the Make-A-Wish Foundation.

Responding to a question from **MCKAY**, **MCCOLLISTER** indicated that he lived on the property.

MITCHELL asked about fire code regulations concerning paving and how **MR. MCCOLLISTER** planned to work around that.

MCCOLLISTER said he would seek permission to use the current unpaved parking lot from the Sedgwick County Fire Department. He commented that if an agreement could not be reached, then he would not be able to open the attraction. He added that two other haunted forests have sand parking lots and have been allowed to open every year.

MITCHELL said he had hoped that the applicant had that issue taken care of prior to asking the MAPC to rule on the application.

HILLMAN asked the applicant if he had any other intentions of using the area for other activities during the year such as an Easter Egg Hunt, etc.

MCCOLLISTER responded no.

JOHN GOLLIHAR, 5259 N. RIDGE ROAD said he has lived in the area for 24 years. He said they expect the occasional noise of a rooster in the morning and a tractor in the daytime; however, they did not expect to hear a chainsaw and screams at midnight coming from the neighborhood. He said these activities keep his household and the neighbors awake when they have to go to school or work in the morning. He said this was an intrusion into the peace and quiet of the neighborhood.

The applicant chose not to speak in rebuttal.

MOTION: To approve subject to staff's alternative conditions.

MARNELL moved, **ANDERSON** seconded the motion, and it carried (10-3). **MITCHELL, BISHOP** and **DENNIS** – No.

GISICK asked if that motion included changing the wording of item #9?

MARNELL said he wasn't sure about the final wording, but that it would be an on-going conditional use permit.

LONGNECKER said staff could provide the correct language to reflect the Commission's intent.

JOHNSON asked about the aisle lighting and sound system.

LONGNECKER said the outdoor sound amplification system would require a waiver from the Board of County Commissioners. He had also informed the applicant that staff is not in favor of having a sound system with speakers at the site. He said he did not think ground lighting required a waiver because it would be low-voltage and not intrusive. He concluded by saying that they have advised the applicant to check with the Sedgwick County Fire Department concerning paving and having them report what would be acceptable paving material for the seasonal use. He said staff would request that the BoCC waive that requirement, based on Fire's recommendation.

MITCHELL said the County's paving standard was an all-weather surface, which sand is not.

BISHOP said she didn't intend to support the motion because she did not think it was the proper location.

DIRECTOR SCHLEGEL asked staff to explain further processing of the application.

LONGNECKER said the application would need to go to the BoCC for consideration of the paving and noise requirements to be waived.

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9. **Case No.: CON2007-27** – St. James Episcopal Church / Twila Warren Request City Conditional Use to allow Day Care at St. James Episcopal Church (3750 E. Douglas) on property zoned "TF-3" Two-family Residential on property described as;

Lot 5 of the Conner Addition in Wichita, Sedgwick County, Kansas,

AND

North 1/2 of Lot 1 of the Cassitt and Magill's Addition in Wichita, Sedgwick County, Kansas,

AND

South 1/2 of Lot 1 and all of Lots 2, 3, 4, 5 and 6 of the Cossitt and Magill's Addition in Wichita, Sedgwick County, Kansas,

AND

West 66 Feet of the South 157 Feet of the East 131.54 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,

AND

East 65.54 Feet of the South 157 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,

AND

South 70 Feet of the North 140 Feet of the East 131.75 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas,

AND

North 70 Feet of the East 151.75 Feet of Lot 2, Block 3 of the College Hill Addition in Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of Douglas and Yale Streets.

BACKGROUND: The applicant, St. James Episcopal Church, is requesting consideration and recommendation for a Conditional Use to allow a Day Care, General, for an after-school program with an enrollment of thirteen kids on church grounds, located on property zoned B Multi-family Residential and TF-3 Two-family residential. The property (0.86 acres) is located about 1,700 feet east of the intersection of Douglas and Hillside on the north side of Douglas. East Douglas Avenue fronts the south side of the property, North Yale Avenue fronts the west side, North Roosevelt Avenue fronts the east side and E. 1st Street fronts the north side. Residential and commercial zoning on all four sides surrounds the property. The Unified Zoning Code requires a Conditional Use when a Day Care, General, is located in TF-3 zoning.

The applicant proposes to provide day care for around thirteen children in the existing church during the week. This site does provide for an outside play area for the after-school program. The applicant has provided Staff with a Site Plan that conforms to the development standards of the City. The site contains approximately 20,000 square feet that houses the church's sanctuary, offices, classrooms and other associated church facilities. Access to the site is provided off North Yale Avenue and off of North Roosevelt Avenue.

CASE HISTORY: The property was platted as part of the College Hill Addition, Cossitt and Magill's Addition, and Conners Addition between 1914 and 1915. This church is within the 500-foot historic environs of the CM Jackman House, located at 158 Roosevelt. This application is for a daycare, general, within an existing structure, and there will not be any alterations to the exterior of the existing building and no significant change in the current use.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single Family Residential Residential Housing

| | | | |
|--------|--------|---------------------------|---------------|
| EAST: | “SF-5” | Single Family Residential | Institutional |
| | “TF-3” | Two Family Residential | Institutional |
| SOUTH: | “GO” | General Office | Office Use |
| | “PUD” | Planned Unit Development | Restaurant |
| WEST: | “LC” | Limited Commercial | Retail |

PUBLIC SERVICES: North Yale Avenue and North Roosevelt Avenue are paved two-lane local roads. East Douglas Avenue is a 4-lane minor arterial with 12,990 average trips per day at the intersection with Hillside Avenue, (just west of the subject site) according to the 2006 Traffic Count Map. Municipal water and sewer services are available at this site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as “major institutional.” The major institutional land use category includes institutional facilities including government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The current zoning of the site is TF-3 Two-family Residential and B Multi-family Residential, a higher residential density. Day Care, General is a conditional use for the TF-3 zone, per the regulations detailed in the WSC Unified Zoning Code.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The Day Care Center shall comply with all applicable regulations.
2. The site shall be developed and operated in conformance with the approved site plan. A day care, general, for up to 13 children is permitted.
3. Outdoor play shall be limited to the hours of 7:30 AM to 6:30 PM if located within 100 feet of a lot containing a dwelling unit.
4. Shared parking may be provided for a provision for parking spaces as outlined in Section IV-A.4 when the day care is located within an existing church or place of worship, however, the day care shall provide convenient off-street loading facilities as required in Section IV-A.14.
5. All outdoor lighting shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not to exceed ½ the distance from the neighboring lot, unless evidence is provided to the satisfaction of the Planning Director that the light source will be aimed or shielded such that the light source is not visible from the neighboring lot.
6. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The area around the site is zoned residential and commercial, developed with residential, commercial and institutional uses. The church is a large structure and is home to a large congregation.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned TF-3, Two-family residential, and is developed with a church. The property could continue to operate as currently zoned, however, the approval of a day care for 13 children is not an unreasonable request for a property developed with a church.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed conditional use is for a daycare / after school program, in an existing church. This type of use is common in churches within the city and county. The affect of a 13 child day care on nearby property will be minimal give the church’s current size.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The 2030 Wichita Functional Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as “major institutional.” The major institutional land

use category includes institutional facilities including government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The current zoning of the site is TF-3 Two-family Residential and B Multi-family Residential, a higher residential density. Day Care, General is a conditional use for the TF-3 zone, per the regulations detailed in the WSC Unified Zoning Code.

5. Impact of the proposed development on community facilities: The church and related uses currently exist, so the impact will not be beyond the capacity of the existing community facilities.

DERRICK SLOCUM Planning staff presented the staff report.

TWILA WARREN, 3750 E. DOUGLAS, AGENT FOR THE APPLICANT, commented that the application states up to 13 children and she wondered if the wording could be changed to 13 or more children since they did not want it to be limited to only 13 children.

DOWNING said that will be an item that will need to be discussed. He asked if they were happy with the staff recommendations other than the number of children.

WARREN responded yes.

HILLMAN asked what number would be acceptable?

WARREN said between 25 and 50 children. She added that they have 13 children in the program now.

BISHOP said she would like a definition of Day Care General and whether there is a limit on the number of children associated with that zoning in the zoning code.

MILLER said they could exceed 13 children, that Day Care General is based on the given site. He said it is not limited like Day Care Limited.

MCKAY asked if there was a square footage per person requirement?

MILLER said possibly that is part of the licensing requirement; however, the zoning code does not address that issue.

Responding to a question from **JOHNSON, SLOCUM** commented that 13 was the number that was on the application.

MCKAY asked what was the square footage of the day care center?

WARREN said she wasn't sure.

BISHOP asked if the MAPC has ever approved Day Care General and left the number of students open and left it to Licensing to determine the appropriate number?

MILLER responded no.

MARNELL asked staff how they arrive at a reasonable number? He said he didn't want to limit the applicant if they had 13 children now.

DIRECTOR SCHLEGEL suggested that the item be deferred until staff can work with the applicant.

SHERMAN asked the applicant if they had a license that stated how many children were allowed in the facility?

WARREN responded no, but said she had been to the Health Department, and they had mentioned up to 100 children.

SHERMAN said that's the number he was looking for.

DOWNING asked the applicant if they would agree to defer the application until August 2nd so staff can work with her.

WARREN said that was fine.

MOTION: To defer the item for two weeks until the August 2, 2007 MAPC meeting.

DOWNING moved, **DENNIS** seconded the motion, and it carried (13-0).

-
10. **Case No.: DER2007-04** Request Amendment to the Unified Zoning Code to define Industrial Scrap Material as a “Recyclable Material” and to specify the definition for “Wrecking/Salvage Yard” to NOT include Industrial Scrap Material, in Article II: Rules of Construction and Definitions.

Background: Laurie and Alvie Campbell, who operate a recycling business in the Bridgeport Industrial area, appeared before the Metropolitan Area Planning Commission (MAPC), and requested that the MAPC consider amending the Unified Zoning Code’s (UZC) definition of “recyclable material” to clarify the definition of “industrial scrap material.”

Currently, the UZC definition for “recyclable material” specifically excludes “industrial scrap materials” from those materials that can be processed as a “recycling processing center” or a “public or private recycling processing station.” Recycling of industrial scrap is considered to be “wrecking or salvage,” which requires a Conditional Use permit in the LI and GI districts while a “public recycling collection station” and a “recycling processing center” require OW or more intense zoning.

“Recycling processing centers” are subject to Supplemental Use Regulation “s” contained in the Unified Zoning Code (UZC). These regulations require: 1. the operation of recycling processing centers are to be approved by the health officer (Environmental Services); 2. recycling processing centers shall be permitted as an indoor use in the GC, CBD, LI and GI districts, and 3. may be allowed as an outdoor use in the LI district only with Conditional Use approval; and recycling processing centers are permitted as an outdoor use with Conditional Use approval in the GI district.

Unified Zoning Code Supplemental Use Regulation dd further states that in the LC through LI districts, the outdoor storage and/or baling of junk, scrap, paper, bottles, rags or similar materials is prohibited (except as provide for in 2 referenced above).

Chapter 3.90 requires that scrap processors obtain an annual license. The requirement for a scrap processing license appears to be primarily aimed at identifying locations of these uses and preventing the exchange of stolen materials.

The Campbell’s operate a recycling business but would like to include metal filings, shavings and other scrap materials in their operations. The MAPC referred the matter to the Advance Plans Committee who met with the Campbells and staff. As a result of the meeting, the Advance Plans Committee asked staff to develop an amended definition.

Analysis: As indicated above, the UZC does not current contain a definition for “industrial scrap materials.” Staff has seen increased interest in recycling operations on a community wide basis, and the public benefits from recycling. Since recycling operations area allowed in less intense zoning districts (OW – GI) when compared to salvage operations (CU in LI and GI), the key is to ensure that the definition of materials that can be accepted at recycling stations is appropriate recyclable materials (e.g. shavings, filings and other small scale materials that result from manufacturing processes or are readily recyclable such as glass, metal and paper), and does not include salvage materials (e.g. vehicles, parts of vehicles, appliances, used clothing or furniture).

Proposed amendments to the Unified Zoning Code include: 1. a definition for “industrial scrap,” 2. expand the definition of recyclable material to include “industrial scrap material” to the list of permitted materials within the definition for “recyclable material,” and 3. add a requirement to Supplemental Use Regulation “s” that the storage and processing of recyclable materials shall be handled in a manner consistent with local, state and/or federal regulations (such as the International Fire Code) in order to prevent soil, air or water pollution, and minimize the potential for fire.

Industrial Scrap means shavings, filings or other remnants created as the byproduct of manufacturing or industrial processes utilizing iron, brass, lead, copper, aluminum, wire, tubing or other recyclable metals or materials.

Recyclable Material means material including but not limited to metal, glass, plastic, paper and industrial scrap material, produced as a by-product, through the manufacturing and industrial process, that is intended for reuse, remanufacture or reconstitution for the purpose of using the altered form. Recyclable material shall not include hazardous materials, used clothing, furniture, appliances, vehicles or parts thereof.

The proposed UZC amendments define “Industrial Scrap Material” within the definition of “Recyclable Material”, establishing conditions for how the scrap material is to be handled and processed for future use. The proposed amendments have been written so that they can apply to both the City and County if they choose to adopt them.

Staff scheduled this public hearing before we were notified of schedule changes for District Advisory Board meetings. There is one DAB that has not heard this request. Comments received as the DAB meetings dealt with: a need for an expanded list of recyclable materials; concern regarding inspections of recyclable material and how those materials are handled; appearance of sites being used as recycling centers; fire and pollution potential of recyclable materials; the impetus for the proposed change came only from one business and their was not involvement from a larger number of recyclers and impact of the proposed change on existing businesses. To-date, DAB II recommended deferral, DAB IV and V have recommended approval and DAB VI recommended denial. DAB I is scheduled for July 23 and DAB III is scheduled for July 18.

Recommendation: Based upon information available prior to the public hearing, staff recommends the proposed amendments to the UZC be **APPROVED**.

This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: The proposed amendments would allow “industrial scrap material” to be processed at “Recycling Processing Centers,” a use that is comparable in intensity to other uses allowed in the subject zoning districts (OW, GC, IP, CBD, LI, GI). The “industrial scrap material” addition, as proposed, to the definition of “Recyclable Material,” would allow for recycling centers to accept and process this material locally, thereby improving the chances that local industries and manufactures would do more of their material processing in the area, other than having to ship their material out of the area/region to be processed.
2. The suitability of the subject property for the uses to which it has been restricted: Recycling facilities are currently restricted from accepting and processing industrial scrap material because of a lack of definition of the term “industrial scrap material” and lack of understanding on what exactly is considered “industrial scrap material.” The level of analysis that occurs in a zoning case and the findings for each approved case should adequately guarantee that any property zoned OW, GC, IP, CBD, LI, or GI is suitable for a recycling processing center.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recycling centers that exist in and around the City are currently processing material that is brought to them for recycling. The addition of industrial scrap material will be no different than what is currently being processed at these recycling centers. Given this factor, allowing recycling centers to accept and process industrial scrap material should not detrimentally affect nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Recycling centers allow people, businesses, industries, and manufactures to bring in recyclable material for processing. This process produces material that can be reused and is thus an environmentally friendly process by reducing the demand on raw material to produce new parts, products, etc. Amending the UZC at this time to allow recycling centers to expand the type of material that they can accept and process, likely will have a positive impact on the local economy.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan has identified areas that are suitable for commercial and industrial development. Each zoning request is reviewed against criteria specified in the Comprehensive Plan. Therefore, any proposed

recycling facility should be in conformance with the comprehensive plan to the extent that the zoning is in conformance with the comprehensive plan.

6. Impact of the proposed development on community facilities: The Zoning Administrator will consider traffic issues during the case application process, as a site plan is required. Additional traffic could be anticipated during the operation of the recycling center that accepts industrial scrap material. Otherwise, recycling centers accepting industrial scrap material should not have a negative impact on any other public facilities.

DALE MILLER Planning staff presented the staff report. He briefly reviewed several definitions pertaining to the proposed amendment.

BISHOP asked about recycling of automobiles with certain types of tanks.

MILLER responded that he would let Central Inspection staff answer that question and added that this was an “across the board” amendment to the Unified Zoning Code, that it was not “site specific.”

HILLMAN asked about the Wichita Police Department’s (WPD’s) involvement with the regulation enforcement.

MILLER commented that **RANDY SPARKMAN** from the Office of Central Inspection was present to answer questions. He added that the scrap operator’s license identifies whom the operator is and is aimed at preventing the sale of stolen material.

HILLMAN clarified that the guidelines would limit and control that situation?

MILLER said that the proposed regulations being discussed don’t address that issue, the scrap operator’s license does that. He said this proposal would take industrial scrap and make it so it can be handled by a recycling processing center as opposed to only a wrecking and salvage yard.

HILLMAN asked if the recycling centers meet WPD guidelines for someone who was stripping copper out of homes and other facilities for recycle.

MILLER said no, not currently. He said he understood that recyclable materials are exempted from the licensing requirements under the Kansas Department of Health and Environment

DENNIS commented for the record that although he sits on DAB V, he did not vote on this issue or make any recommendation.

JOE LANG, LAW DEPARTMENT, said the Wichita Police Department has secured some statutory amendments that aid in the tracking of various scrap metals.

RANDY SPARKMAN, OFFICE OF CENTRAL INSPECTION (OCI), stated that the City was in favor of this proposed zoning amendment. He said it will bring the ordinance in line with what is currently happening in the industry and OCI does not believe enforcement will be an issue. He said scrap licensing would address the type of materials that will be made available to the recyclers with the code change. He concluded by stating that the code change will be City wide, not just at one particular location. He said it appears that one location seems to be the focus of this issue and added that if there are violations or problems that need to be addressed, then OCI staff will handle that. He mentioned that recycling handles smaller household type items, while industrial scrap needs to go to a wrecking and salvage operation. He said since he was not an engineer, he could not address how this would affect the environment; however, he said the code does regulate some of that issue.

DENNIS requested whether recycling would be done indoors, outdoors, or both.

SPARKMAN clarified that the zoning code allows recycling in the “Office Warehouse” through “General Industrial” zoning. Recycling in Office Warehouse through Limited Industrial needs to be indoors, unless a conditional use permit is issued. He said recycling can be conducted outside in General Industrial zoning.

PATRICK HUGHES, ATTORNEY WITH ADAMS, JONES LAW FIRM, 1635 NORTH WATERFRONT PARKWAY, said he was present on behalf of Drywall Supply Company, 3420 N. Ohio. He said what he does is he

look at the language of the Unified Zoning Code and applies it to an individual dispute. He said Drywall Supply objects to the proposed amendment because of its potential consequence of an “end run” around the MAPC’s recommendation two years ago against a conditional use that would allow a wrecking and salvage yard on General Industrial property that was North of 29th Street and north and west of Ohio near Drywall Company’s showroom and warehouse. He does not believe staff intended this; however, it is a potential result of the suggested changes as proposed. He said the MAPC’s vote against that application recognized that the proposed use was not compatible with the 21st Street Improvement Plan and was not appropriate for the area. He said they felt it was important to keep the safeguard of a conditional use permit process in place. He said the proposed changes may bypass that decision. He provided MAPC members a summary of Drywall Supply Inc’s concerns.

The Commission moved to allow the speaker 3 more minutes.

HUGHES briefly reviewed Drywall Supply Inc’s objections. He specifically mentioned shavings and filings and said he thinks there needs to be some additional language that goes into the definition of recyclable materials so that it does not include any equipment, machinery, tooling, or industrial material other than industrial scrap. He said the proposed amendment arguably

Tape 2, Side 1

would remove the prohibition of processing scrap industrial tools and apparatus in recycling processing centers. He said the recycling of industrial scrap should not be permitted as a matter of right in recycling processing centers. He also mentioned that the amendment would allow industrial scrap to be collected at public recycling collection stations in any zoning district.

He said these centers are for the convenience of consumers, not for the purpose of allowing industry to take their manufacturing scraps there. He said his client was requesting that the amendment not be made, and if it is made, that it be clarified so that the processing of industrial materials other than shavings, filings and remnants of material is explicitly disallowed at recycling processing centers.

TYSON LONGHOFER, ATTORNEY WITH STINSON, MORRIS AND HECKER LAW FIRM, said he was present on behalf of Metros Companies, Inc., Metro Express, 3518 N. Ohio. He said he concurred with Mr. Hughes’ comments and that he was also present two years ago and expressed the same concerns that his clients did then. He said he seconded Mr. Hughes’ comments.

FRED WISE, JOHNSON CONTROLS (formally York International) **3110 N. MEAD** said he concurred with Mr. Hughes comments. He said he felt this proposed amendment opened up a can of worms. He said now there are a limited number of scrap yards that can handle industrial scrap. He said he has concerns about the definition of shavings and industrial scrap and requested that the definition be revised. He concluded by stating that if small recycling centers are allowed to handle industrial scrap, they may be getting something they know very little about. He mentioned cutting fluids and other chemicals used to process materials and concerns about hazardous chemical disposal.

HANK PRICE, BOARD MEMBER OF THE WICHITA KENNEL CLUB, 3448 N. EMPORIA said he concurred with Mr. Hughes. He said this proposed change in the zoning requirements is a solution where there is no real problem. He said there is no problem with processing industrial scrap in Wichita right now. He said this would move the processing of industrial scrap from licensed scrap yards to unlicensed recycling centers. He briefly reviewed the six findings in the report. He said there is insufficient access to the property adjoining the Kennel Club to use it as a recycling center let alone expanding it into a facility that can accept scrap material. He commented that they have piles of scrap metal that have not been moved in years. He referred to page one of the report and said this is the result of a request from one business owner who is basically requesting a zoning change because they could not get a conditional use permit. He concluded by reviewing the definition of industrial scrap and voiced concern about the term “other materials.”

ALVIE CAMPBELL, OWNER OF ACCESS ORNAMENTAL RECYCLING COMPANY, 3423 N. ST. FRANCIS, referred the MAPC members to various pictures in and around his property stating that the zoning was General Industrial. He also passed around various objects such as stainless steel, brass wall plate, an iron skillet, aluminum cans, etc. and other items that they are allowed to recycle. He commented that they cannot recycle shavings. He mentioned that the neighborhood they are located in is 90% industrial and that they are installing a

\$30,000, eight-foot high fence along the backside of the property beside the Wichita Kennel Club. He said currently that is not a requirement, but they are doing that to please their neighbors.

MITCHELL asked if they were in compliance with the zoning regulations?

ALVIE CAMPBELL said yes.

MITCHELL clarified so they were requesting the zoning change only so they can expand their business?

ALVIE CAMPBELL said yes, they would like to be able to process industrial scrap.

HILLMAN commented that the pictures of the material at his operation were quite clean (he mentioned cleaning processes used by Boeing) and mentioned that he was a little surprised that they included automobiles.

ALVIE CAMPBELL said they are not an automobile salvage operation and they do not take hazardous waste. He said most machine shops use a biodegradable, water-soluble cutting agent.

BISHOP said she thinks part of concern especially with the language and the proposed definition might stem from the fact that Mr. Campbell has items stored; which, she said if she understood it correctly, they are not allowed to recycle?

ALVIE CAMPBELL said they cannot recycle industrial scrap at their operation.

BISHOP asked if Mr. Campbell had vehicles stored at the location?

ALVIE CAMPBELL said all the vehicles that are stored at his business run. He mentioned work equipment, three roll off trucks, Dempsey dumpsters (container trucks), and two semi trailers.

BISHOP said she understood from Mr. Sparkman that he had vehicles stored on the property.

ALVIE CAMPBELL said the Coke machines are all working units. He said he stores those until he sells them.

HILLMAN said so under the current definition, he could accept a crane and store it on his lot until someone wanted to refurbish it?

ALVIE CAMPBELL said he was sure he could, he said he currently has a running crane on his lot.

TOM OLSEN, VICE PRESIDENT, HOC INDUSTRY, 3511 N. OHIO said they are opposed to the changes in the zoning code. He said they were also opposed the conditional use permit 2 years ago. He said they feel this is an opportunity to increase the facility until there are piles of scrap in an industrial area that they have spent hundreds of thousands of dollars trying to bring up to a high standard. He said he would not like to have to be forced to drive potential clients and customers from out of town by scrap yards to get to their business. He commented that the **CAMPBELLS** have not cut the weeds down along the fence at 29th and Ohio for months and that they do not maintain the property properly. He concluded by saying that they supported Mr. Hughes' comments and asked that the MAPC deny the proposed changes.

JOHNSON out @ 3:23 p.m.

BISHOP asked if they would support language that would define the other recyclable metals or materials more explicitly?

OLSEN said in general they are opposed to any type of a scrap facility in their industrial area. He said just because the area is zoned General Industrial doesn't mean that anything will benefit the area, the area's property values and how their clients view their business. He said this would just open up the facility at 29th and Ohio to mass dumping of metal scrap and be an eyesore to the whole community.

Responding to questions from **MITCHELL**, **OLSEN** confirmed that they were not satisfied with the facility at 29th and Ohio as a neighbor and that increased use and undesirable activity would increase if the zoning were changed.

LEONARD HICKS, 2230 CARDINAL DRIVE said they have done an extensive amount of work in the Bridgeport area to build his businesses up. He said they have constructed million dollar buildings to make the area look good and present a good image of the City. He said with the current proposal the **CAMPBELLS** would not be required to have a fence or licensing because their operation would be termed a "recycling center." He added that there were no height restrictions on how high the mess could be piled, and added that it was a mess over there.

MARK CHAVEY, REDWHEEL FUNDRAISING, 3435 N. EMPORIA said he believed that everything that is being asked for can be done with a conditional use permit. He said he believed the process was designed so that the City Council and what ever other departments needed to, could review any requests. He said if the proposed change is implemented, the City would no longer have that review process. He said as far as changing the definitions, it sounded like a good idea, but he really didn't know anything about that. He said industrial waste is not small piles. He provided MAPC members a picture of a pile of recycling at the **CAMPBELLS** operation and commented that it was not supposed to be industrial waste, just recycling. He said he also has an issue with enforcement, since many of the recycling centers are accepting industrial waste now, so obviously the regulations are not being enforced. He said the City of Wichita has tried to clean up this area and he would hate to see the City take a step back with opening up the regulations.

ERIC TANGMAN, OWNER OF SOUTHWEST PAPER, 3930 N. BRIDGEPORT CIRCLE, said they moved up to Bridgeport to make way for Old Town and put a significant investment into their 100,000 square foot building as well as maintaining the surrounding grounds and shrubs. He said they are against the amendment because there are vacant lots in the area and they are afraid that this will open the area up to more industrial waste operations. He said without the ability to issue conditional use permits, he believes the MAPC loses the ability to plan.

JIM SHOLVER WITH THE FASTENAL COMPANY, 3440 N OHIO he said they are an industrial and supply company. He said they support Mr. Hughes' comments and are against any language change in this proposal.

RAY STASIEKO, VICE PRESIDENT OF KK OFFICE SOLUTIONS, 3901 N. BRIDGEPORT said their company purchased the lot next door to Southwest Paper and that it was a million dollar investment, \$100,000 of which went into their lobby because they also bring customers to their facility. He said across the street is a huge vacant lot that could end up being the location of some blight. He said the City has spent the last year discussing blight with regards to housing. He concluded by registering their protest to bring this type of high industrial usage into the area.

LESLIE HICKS, 2230 CARDINAL, said she owned property in Bridgeport and that she is familiar with the process by which people apply for conditional use permits. She said she has also become more familiar with definitions and recycling and salvage and enforcement than she would ever hope anybody would need. She said when this issue came to Advance Plans Committee; one of the comments made was "that there should not be unintended consequences that would occur." She said she thinks that is what is happening. She said the unintended consequences are that there is a method by which people get conditional use permits in order to recycle or salvage industrial scrap. She said two years ago there was a conditional use request that was issued to a property and that their specific comments at that time were that they wanted to recycle or salvage industrial scrap. She said that request was denied and they were told they could recycle household items such as spoons, cans, etc. She said she has not seen any household items at the location, but has seen a number of other items, which she has been told were storage not salvage. She commented that a request that was turned down in the past will become a viable option within recycling centers. She said one of the comments she has found repeatedly during her research on the Internet from other Cities, States and government units, including environmental agencies, is that recycling centers, in addition to wrecking and salvage centers are always a cause for concern because of the concentration of the metals and items. She said another concern is the very nature of the business requires hydraulic equipment in order to move and process these items. She said it is the concentration of the metals and equipment that give rise to concerns for groundwater contamination and storm water run off. She concluded by saying that the current definition offered by Planning Staff did not come into place until after the first few DAB meetings. She said she feels the definition for industrial scrap is woefully inadequate and she also expressed concerns about monitoring and enforcement activities. She said the rest of the nation is moving towards higher regulation of recycling for both visual as well as environmental concerns. She suggested that this proposal be scaled back to not include industrial scrap.

LORI CAMBELL, 3423 N. ST. FRANCIS CIRCLE, said they are simply recyclers. She commented that someone alleged that they were driving through the Wichita Kennel Club's property; she said that was not true. She said Councilwoman Fearey asked if we could put up a fence because of the new neighborhoods. She said if they could have afforded to do that earlier, she does not believe they would have been denied the conditional use permit.

She said this is a “not in my backyard” situation; however, they were in a General Industrial zone. She said although office warehouses can exist in other areas, this is where they have to conduct their business and there is not much General Industrial property out there in Wichita. She said MAPD staff seemed to agree that the zoning code needed to be updated. She said recycling centers in a City the size of Wichita should be vital to the community. She mentioned several benefits of recycling such as preserving raw materials, reducing waste, and saving energy. She said in Wichita there are approximately 135 machine shops, 34 metal fabricators, finishing, spinner and stamping companies and 11 aluminum-fabricating companies and 151 aircraft component manufacturers not to mention Cessna, Boeing, Spirit, Bombardier and Beechcraft. She said she didn’t think it was fair that they should have to go to the large metal scrap yards, when a metal processing company could suit their processing needs much better. She mentioned that some businesses are just not aesthetically pleasing.

The Commission moved to allow the speaker 3 more minutes.

CAMPBELL said she thought City officials were doing their job fine and that they have been out to the **CAMPBELL**’s place of business to discuss any issues and that they have immediately complied with any City requests. She said when they built their property, they came to the City and explained what they do and asked where they could build. She stressed that they do not process hazardous materials. She said a lot of people who spoke in opposition built in General Industrial, and they know what can happen in a General Industrial zone. She said many cities require recycling. She concluded by asking the MAPC to approve the recommended zoning change.

MITCHELL asked if there were over 300 businesses that need their services, why aren’t any of them present to support the proposal?

CAMPBELL said she didn’t think it was business-like to ask their clients to come to the meeting to support them.

Tape 2, Side 2

HENTZEN said he was overwhelmed with the information they received today and he wanted to spend whatever time was necessary for the Commission to understand what needs to be done and what is the right way to do it. He said there are junkyards all over town; he finds that offensive because they look terrible and they are difficult for the code enforcement people to deal with. Also, he said he doesn’t want to put anything into affect that prevents recycling or re-using basic products. He suggested the matter be tabled pending further research and discussion.

DOWNING suggested board members be allowed to ask staff questions concerning the proposal.

MARNELL asked if staff heard anything from the public testimony that would change their recommendation?

MILLER said Planning staff was asked to put the language together by the Advanced Plans Committee; however, staff was not either supporting or objecting to the proposal.

DIRECTOR SCHLEGEL commented that there was a lot of testimony today, which was a lot to absorb, and said if the Commission would like staff to consider further revisions to the amendments, staff would continue to work on the proposal. He said the options were to move the proposal forward to the governing bodies with a recommendation to approve or deny the proposal or continue to work on the proposal to come up with a revision that will address some of the concerns that were expressed today.

MARNELL said he got the “not in my backyard” gist from the public testimony but added that General Industrial is the heaviest zoning in the City and County. He said if people move retail operations into General Industrial because they can obtain the land cheap, and then complain about who their neighbors are, in his opinion, that was extremely disingenuous. He said he was more interested in the technical functions and recycling.

Responding to a question from **ANDERSON**, **MILLER** explained that the **CAMPBELL**’s appeared before the Planning Commission with a request to amend the zoning code and the Commission referred the request to the Advance Plan’s Committee.

BISHOP said she was in favor of deferral. She said things that encourage and expand the opportunities for recycling are a good thing; however, she said the language was too broad and difficult to enforce.

HILLMAN said he also would be in favor of tightening the language. He said we need recyclable materials processed and we need to open that up and do a better job of enforcement, but that it was obvious from the pictures that the City is going the wrong way with the process. He said if this is in fact a process center for recycling there needs to be a process by date. He said items should not be stored forever on a site waiting for someone to invent a process to use them in 20 years.

DIRECTOR SCHLEGEL said it sounds like the Commission would like to expand the discussion beyond the issue that staff was trying to address with this particular amendment. He said it sounds like this will continue to be a growing issue.

Responding to a question from **MITCHELL**, **SPARKMAN** explained that the current operation was in compliance with zoning; however, there have been issues that staff has asked the **CAMPBELL's** to correct in the past. He said a fence or wall is not currently part of the zoning requirement. He said if the zoning was changed and the **CAMPBELL's** received a scrap license, the operation would have to be screened. He said not necessarily a wall, but screening such as wood or metal.

MITCHELL suggested as well as looking at changes in the zoning code, maybe they also needed to look at better screening regulations in this zoning.

MCKAY stated that he thought this was a single-issue item and asked what effect the new definition would have on the balance of these types of businesses? He suggested looking at the overall situation and getting a little deeper into the issue.

DENNIS said he was also concerned about the industrial scrap definition and other recyclable materials and metals and felt that was pretty broad. He added that he did not understand why they couldn't use the safeguard of a conditional use permit rather than changing the zoning code.

DOWNING asked if the Commission could continue this item at the next MAPC meeting.

DIRECTOR SCHLEGEL suggested that staff spend more time than just the next 2 weeks and work with the Advance Plans Committee.

GISICK asked if any other recycling businesses have requested any changes and asked about the conditional use and if this request circumvented that process.

DIRECTOR SCHLEGEL explained that the **CAMPBELL's** made this request after they were denied a conditional use by the City Council.

MOTION: To ask staff to go back to Advance Plans with a proposal to change the zoning regulations to permit a broader use of scrap materials as recycling but also look at the conditions that need to be placed on businesses that will be using the new ordinance as far as screening and their affect on adjacent properties

MITCHELL moved, **ANDERSON** seconded the motion, and it carried (12-0).

HILLMAN suggested a friendly amendment to include the definition of what recycling is and how long something can be stored on a property before it gets processed.

BISHOP said she was going to support the motion. She said she would like to see the Commission address this as a systemic issue within the community that is not related to one particular site because she believed there were other stakeholders such as the Recycling Coalition and Sedgwick County that should be brought into the discussion.

HENTZEN asked about a time frame.

DOWNING suggested that the Commission let the Advance Plans Committee determine the time frame.

GISICK suggested that if the Advance Plans Committee looks at restrictions, he hopes they will not hinder other recycling businesses.

BISHOP mentioned a not-for-profit recycling center and how this could help them develop a revenue stream and make recycling more convenient for citizens.

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11. **Case No.: DR2005-21** Request Amendment to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code to amend Section III-C.5. for the A-O, Airport Overlay Districts and Sections III-C.9. and V-I.2.o. for the AT/FP-O, Anti-Terrorism/Force Protection Overlay District pertaining to the recommendations from the McConnell Air Force Base Joint Land Use Study

DR2005-21: Public Hearing to Consider Amendments to the AOD, Airport Overlay Districts and the AT/FP-O, Anti-Terrorism/Force Protection Overlay District

MCKAY indicted that he would move to the audience and would not be participating as a commissioner since he owned property within the affected area; however, he reserve the right to speak at the hearing as an affected property owner.

SCOTT KNEBEL Planning staff presented the following staff report:

Background: In November 2006, the Sedgwick County Commission and Wichita City Council directed staff of the Wichita-Sedgwick County Metropolitan Area Planning Department to proceed with a number of zoning code text and zoning map amendments in order to implement the recommendations of the Implementation Coordination Committee for the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS).

One of the initiated zoning code text amendments is to amend the AOD, Airport Overlay Districts to be more consistent with Federal Land Use Compatibility Guidelines (LUCG), which list compatibility of uses with McConnell Air Force Base (AFB) based on proximity to flight paths and noise contours. The proposed amendments do not entirely prohibit all the uses discouraged by the LUCG. Rather, many uses would be limited in their intensity through a limitation on floor area ratio. The proposed amendments would prohibit parking, aviation-related facilities, storage uses, cemeteries and certain agricultural uses in AOD I; residential uses in AOD II; and funeral homes and government services in AOD II and III. The density of residential uses would be further restricted in AOD III, and the intensity of auditoriums, stadiums, recreation, and community assembly uses would be limited in AOD II and III. The amendments further clarify that existing uses can continue, be rebuilt, and changed to a similar use. The proposed amendments to the AOD are shown in detail in an attach document. An attached map shows the boundaries of the AOD.

On June 5, 2007, when the City Council approved the zoning of properties near the AFB to the AT/FP-O, Anti-Terrorism/Force Protection Overlay District, the issue of a negative connotation being generated by the name of the overlay district was discussed. As a result, the City Council initiated a zoning code text amendment to change the name of the overlay district to the AFBP-O, Air Force Base Protection Overlay District. The proposed amendments to the AT/FP-O are shown in detail in an attached document.

A notice of the July 19, 2007, public hearing before the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) on the proposed zoning code text amendments was published in *The Derby Reporter* and *The Wichita Eagle* on June 28, 2007. Additionally, although it is not statutorily-required, a notice of the hearing was mailed to the over 1,200 property owners within the AOD. These property owners were invited to an open house hosted by staff on July 9, 2007, in order to answer their questions regarding how the proposed amendments affect their specific property. The open house was attended by 36 property owners, and no significant opposition to the proposed amendments was expressed at the meeting. The proposed amendments will be considered by District Advisory Board III on August 1, 2007, and District Advisory Board II on August 6, 2007.

Recommended Action: Based on information available prior to the public hearing, staff recommends that the proposed zoning code text amendments be **APPROVED**. This recommendation is based on the following findings:

1. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners: The proposed amendments will further the health, safety, and welfare of the public by providing regulations that increase the compatibility of private land development with Air Force Base operations. While the proposed amendments have use regulations and development standards that are more restrictive than existing regulations, the proposed amendments provide sufficient

development opportunities to preserve private property values, do not create a hardship for property owners, and strike a reasonable balance between the use of private property and the preservation of the public health, safety, and welfare.

2. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed amendments are consistent with the recommendations of the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS). The JLUS recommends revising current regulatory requirements to minimize potential safety conflicts, as recommended by the Federal Land Use Compatibility Guidelines. The proposed amendments further this objective.

GISICK asked about the AT/FP-O name change and why wouldn't that be considered at this time. He said he owned a real estate company and a big concern he had was trying to sell properties in a designated terrorism area.

KNEBEL said staff was recommending the name change today.

MITCHELL referenced Page 1, item C. and asked for clarification of the location of the "West Subdistrict."

KNEBEL indicated that the subdistricts were created in recognition of existing uses, especially at Cessna.

TOM WEDMAN, 2 NW 92 ROAD, P.O. Box 325, HARPER, KANSAS said he had purchased property south of the airport 25 years ago for his cattle operation and as an investment. He said each time the area has been rezoned it has been detrimental to the value of his property. He commented that in the past when the B-1 Bombers flew overhead, it frightened the cattle into breaking down the fence which resulted in the City of Derby imposing a \$75.00 fine per animal. He said he currently farms the area. He said this zoning would greatly decrease the value of his property. He suggested the City or Air Force buy his property, although he said he understood that wasn't going to happen. He concluded by saying that he did not think this zoning change was fair.

RICK PUTTMAN, 551 SAINT ANDREWS, said he represented the Janice Putnam Trust who owns the golf park on East Harry. He referenced page 3, the term "similar use". He commented that they have been adversely affected by this zoning. He said the property is currently for sale. He also mentioned removal of "recreational facilities" referenced on page 6. He said he understood that there would be some "grand fathering," but he asked about the ability to expand the current facilities.

BISHOP out at 4:15 p.m.

KNEBEL explained that currently the "grand fathering" provisions state that the building must be for the same use, similar use or use of lesser intensity. He said staff is recommending that the term "similar use" be replaced with the wording "any use currently permitted by the overlay or underlying zoning districts." He said regarding "recreation," the proposed wording would change from "all indoor/outdoor entertainment and/or recreational facilities" to "recreation and entertainment" which has a specific definition in the zoning code.

MOTION: To approve subject to staff recommendation.

ANDERSON moved, **HILLMAN** seconded the motion, and it carried (10-0).

The Metropolitan Area Planning Department informally adjourned at 4:30 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2007.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)